

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1032-FT

Cir. Ct. No. 2013ME873

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF STEVEN R. C.:

WAUKESHA COUNTY,

PETITIONER-RESPONDENT,

V.

STEVEN R. C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
WILLIAM DOMINA, Judge. *Reversed and cause remanded with directions.*

¶1 GUNDRUM, J.¹ Steven R. C. appeals the circuit court's final order of commitment, arguing that the court lost competency to proceed in this matter when a probable cause hearing on the related petition for examination was not held within seventy-two hours of his initial detention. We agree and reverse.

Background

¶2 The Waukesha police department initiated an emergency detention of Steven pursuant to WIS. STAT. § 51.15 at 9:30 p.m. on Monday, November 18, 2013. A related petition for Steven's mental commitment was filed as case No. 2013ME860, with a probable cause hearing on the petition scheduled for 11:00 a.m. on Thursday, November 21. That hearing never took place; however, the County filed a new, separate petition against Steven, case No. 2013ME873, pursuant to WIS. STAT. § 51.20(1)(a)1. and § 51.20(1)(a)2.e., at 1:47 p.m. on November 21. A hearing on the second petition was held before a court commissioner on Tuesday, November 26. The court commissioner dismissed the case on jurisdictional grounds, and the County sought a de novo hearing before the circuit court. On November 27, the circuit court held the de novo hearing, concluded it did have jurisdiction, found probable cause, and permitted the petition to proceed. A final hearing was held on December 4, 2013, and the court ordered Steven committed.² Steven appeals. Additional facts are set forth as necessary.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The Honorable Ralph M. Ramirez presided over the de novo hearing and the Honorable William J. Domina presided over the final hearing.

Discussion

¶3 Before the circuit court, Steven argued that the court lacked jurisdiction to proceed. On appeal, Steven instead contends the court “lacked competence to enter the order committing Steven.” Jurisdiction and competence are not the same. “A court loses competency to proceed when it has jurisdiction over the persons and subject matter of the proceeding, but for other reasons does not have the power to render a valid judgment.” *Dane Cnty. v. Stevenson L.J.*, 2009 WI App 84, ¶6 n.4, 320 Wis. 2d 194, 768 N.W.2d 223. Because on appeal both parties argue the issue of competency, not jurisdiction, that is the issue we will address.

¶4 Steven contends the circuit court lost competency to proceed in this matter when a probable cause hearing on allegations contained in the second petition for examination, filed on November 21, was not held within seventy-two hours of Steven’s initial detention as required by WIS. STAT. § 51.20(7)(a). We independently review matters of statutory interpretation and application. *Stevenson L.J.*, 320 Wis. 2d 194, ¶8.

¶5 WISCONSIN STAT. § 51.20(7)(a) states:

After the filing of the petition under sub. (1) [a petition for examination], if the subject individual is detained under [WIS. STAT. §] 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1)(a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

Here, Steven was detained beginning at 9:30 p.m. on Monday, November 18, 2013. A hearing on the related petition for examination was not held until Tuesday, November 26, which was well in excess of the seventy-two-hour period.

¶6 The County asserts that the filing of the second petition commenced a new seventy-two-hour period for holding a probable cause hearing because that petition (1) “was reviewed and approved by a judge” who issued an order for detention and (2) was “substantively different” from the initial petition because it alleged a “different standard of dangerousness as the basis for commitment,” a standard which “defines dangerousness as a substantial probability of harm after evaluating a subject’s treatment history.”³ Based upon our decision in *Stevenson L.J.*, we conclude reversal is required.

¶7 In *Stevenson L.J.*, Stevenson was detained in Brown county pursuant to a WIS. STAT. § 51.15 statement of emergency detention filed by a law enforcement officer. *Stevenson L.J.*, 320 Wis. 2d 194, ¶4. He was transferred to Mendota Mental Health Institute in Dane county. *Id.*, ¶¶1, 4. No probable cause hearing was held within seventy-two hours of the initial detention, yet Stevenson remained under detention. *Id.* Approximately one day after the seventy-two-hour period had expired, the treatment director at Mendota filed another statement of emergency detention, which contained “additional allegations of dangerousness and was filed in a different county by a different detaining authority.” *Id.*, ¶¶4-5,

³ It appears from references made in the transcript of the de novo hearing that the circuit court had before it and was considering the petition in case No. 2013ME860; yet the petition and record in that case are not before us on appeal. In a case such as this, the record in case No. 2013ME860 should have been included.

13. A probable cause hearing on the second petition was held hours later, and the court commissioner found probable cause. *Id.*, ¶5.

¶8 Stevenson moved to dismiss the petition on the basis that the circuit court lost competency to proceed on the second statement of emergency detention “because a probable cause hearing had not been held within seventy-two hours of his initial emergency detention.” *Id.*, ¶6. The County argued that the treatment director’s statement of emergency detention not only authorized Stevenson’s detention after the initial seventy-two-hour period had passed, but also began a new seventy-two-hour period for holding a probable cause hearing. *Id.*, ¶9. The court framed the dispute as

center[ing] ... on whether, in spite of noncompliance with the statutory time limit with respect to his initial detention, Stevenson L.J. was lawfully detained by virtue of the statement of emergency detention subsequently filed by the treatment director, and whether the Dane County Circuit Court therefore had competency to proceed with a probable cause hearing on the allegations contained in that statement.

Id., ¶7. We emphasized the liberty interest at stake:

The authority to confine an individual involuntarily to a mental health facility implicates a liberty interest protected by due process. In recognition of the significant liberty interest ... the legislature has imposed tight time limits in connection with involuntary detention proceedings. The time frame for holding a probable cause hearing is calculated in hours, not days, from the moment the individual arrives at the facility, thus illustrating the legislature’s intent to prevent people from being detained any longer than necessary.

Id., ¶11 (citations omitted).

¶9 The County here states that *Stevenson L.J.* is “factually dissimilar” from the case before us because the second petition in *Stevenson L.J.* was

commenced “*after* the 72-hour period had lapsed.” The County continues that this failure to comply with statutory time constraints in an “initial case is a dispositive question on a court’s competency to proceed in any subsequent proceedings.” The County then emphasizes that it filed the second petition here *before* the expiration of the seventy-two-hour period from Steven’s initial detention. The County, however, fails to make any arguments explaining why this distinction should make a difference with regard to competency, nor are any persuasive arguments readily apparent.

¶10 The County further points out that, in this case, the second petition required and resulted in a court order for Steven’s detention, and therefore provided a procedural safeguard that was missing with the subsequent emergency detention in *Stevenson L.J.*, which was based only upon a statement of emergency detention by the treatment director at Mendota. However, we can find nothing in the plain language of WIS. STAT. § 51.20(2)—the subsection addressing procedures for a petition for examination and related court order of detention—that suggests such a procedural safeguard affects the time period for a probable cause hearing following initial detention. Indeed, both § 51.20(2)(b) and § 51.20(7) refer to the same requirement—that a probable cause hearing is to be held “within 72 hours after the individual arrives at the facility.”

¶11 The County also argues that its second petition was “substantively different” from the first petition because it contains allegations of Steven’s dangerousness that are different from those in the first petition. Such a difference, however, did not alter our view of the detention in *Stevenson L.J.* where we held that

the fact that the treatment director’s subsequent statement of emergency detention contained additional allegations of

dangerousness and was filed in a different county by a different detaining authority does not cure its defect. The statement's shortcoming does not lie in its venue or in its content; instead, it lies in the fact that the detention it sought to execute was contrary to the statutory requirements and was thus unlawful.

Stevenson L.J., 320 Wis. 2d 194, ¶13. The County fails to explain how different allegations of dangerousness trump the seventy-two-hour statutory requirement, especially in light of *Stevenson L.J.*

¶12 Similar to the second petition in *Stevenson L.J.*, the second petition and related court order here effectively sought to extend the statutorily authorized detention period prior to a probable cause hearing beyond seventy-two hours “after the individual arrives at the facility.” Absent a request to extend the time period by Steven or his counsel, the court could not extend this period. *See* WIS. STAT. § 51.20(7)(a) (“At the request of the subject individual or his or her counsel the [probable cause] hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.”).

¶13 Had the initial petition been dismissed and Steven released, a new seventy-two-hour period would have begun upon his subsequent detention on the second petition. Alternatively, had the County held a probable cause hearing on the second petition prior to 9:30 p.m. on November 21, 2013, Steven would have no ground for complaint in this case.⁴ What neither the County nor the court

⁴ From the record and briefs, it appears that when the County decided not to proceed with the 11:00 a.m. hearing on November 21 (which was more than ten hours before the expiration of the seventy-two-hour period), it already was intending to file the second petition. We have found no indication in the record of the County making an effort to hold the probable cause hearing on the second petition prior to expiration of the seventy-two-hour period.

approving the detention order on the second petition could do, however, is extend the seventy-two-hour detention period on their own.

Conclusion

¶14 For the foregoing reasons, we agree with Steven that the circuit court lacked competency to proceed with the probable cause hearing beyond the seventy-two-hour time period of his initial detention. As a result, we reverse the circuit court's order of commitment of Steven and remand for dismissal of the petition.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

